



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/032,701	12/28/2001	Sandra A. Richlen	659-920	5371

7590 10/31/2005

BRINKS HOFER GILSON & LIONE LTD.
P.O. Box 10395
Chicago, IL 60610

EXAMINER

REICHLE, KARIN M

ART UNIT	PAPER NUMBER
----------	--------------

3761

DATE MAILED: 10/31/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/032,701	Applicant(s) RICHLEN ET AL.	
	Examiner Karin M. Reichle	Art Unit 3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 August 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 11-20,31-40,42 and 44-48 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 11-20,31-40,42 and 44-48 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 August 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Specification

Drawings

1. The drawings were received on 8-18-05. These drawings are accepted by the Examiner.

Claim Language Interpretation

2. The directional terms are defined as set forth on page 5, lines 4-27. "Releasably engaged" is defined as set forth on page 6, lines 12-19. "Fixedly secured" is defined as set forth on page 6, lines 20-24. "Line of weakness" is defined as set forth on page 7, lines 12-20. "Body panel" is defined as set forth on page 18, lines 3-7. "Nonwoven" is defined as set forth in the sentence bridging pages 19-20. Attention is invited to the paragraph bridging pages 25-26, i.e. while the testing protocol on pages 36 et seq is preferred it is not required, i.e. the claims do not limit the testing protocol to that set forth on pages 36 et seq. It is also noted that the length of the panel, see discussion of the testing protocols, has not been set forth. It is noted that the body panel is not limited to a single layer of material, i.e. the line of weakness can be in only one layer of a multilayer panel as claimed (Note also Response to Applicant's remarks infra). Also note that a fastener is claimed only in claims 16 and 35 and page 1, lines 5-19 and page 2, lines 15-18.

Claim Rejections - 35 USC § 102/103

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

4. Claims 11-20, 31-40 and 45-46 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Igaue et al GB '024.

Claims 11-20 and 45: See claim language interpretation section supra and Igaue et al at Figures, abstract lines 3 et seq, page 2, last paragraph, page 9, line 17-page 11, line 2. The front panel is 1, the rear panel is 2 and is connected to the front panel by seam 8, the line of weakness is 9b, the elastomeric material is 14-15 and the fastener member is 5 and 6. Therefore, the Igaue reference clearly teaches all the claimed limitations except for the specific tear and tensile strengths. On page 2, lines 15-18 of the instant disclosure, Applicants set forth the purpose of the tensile and tear strengths is to allow breakage along a line of weakness to convert a pant-type garment to an open product without undue effort (It is noted that the terminology “undue effort” is considered relative). The claimed strengths are disclosed as those preferred. While Igaue et al does not explicitly teach the strengths (see Claim Language Interpretation section supra), see the portions of the Igaue reference cited supra which also teach an absorbent garment which converts from a pant-type garment into an open product simply by providing a line of weakness, i.e. a tear line, so as to allow the user to tear, i.e. break, the garment along such line. Thus, and additionally considering the lack of claiming a specific testing protocol, it is the Examiner’s first position that there is sufficient factual basis for one to conclude that the Igaue et al panel would inherently include the claimed strengths when tested, at the very least, according to some testing protocol, and, at the very most, according to Applicant’s preferred testing protocol. Note MPEP

Art Unit: 3761

2112.01. In any case, it is the Examiner's second position that even if the Igaue reference does not include the exact strength ranges, the general conditions of the claims are disclosed by the Igaue, see discussion of Applicant's purpose and the purpose of Igaue supra, and it is not inventive, i.e. it would be obvious to one of ordinary skill in the art, to discover the optimum or workable ranges, i.e. Applicant's ranges, by routine experimentation, In re Allen, 105 USPQ 233 (CCPA 1955). Finally, it is Examiner's third position that the claims are product by process claims and test characteristic claims, i.e. rather than setting forth the specific structure and composition of the panel and line of weakness, the claims define the end product by physical characteristics thereof which are determined by a test, i.e. equipment and process, used to measure such. As set forth in MPEP 2113, even though product by process claims are limited by and defined by the process, i.e. the processing of testing here, determination of patentability is based on the product itself, i.e. the end product. If the product in the product by process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by another process. As discussed supra, since the structure of the panel and line of weakness are not specifically set forth and the test used to determine the strengths is not specifically set forth, the end product as best understood is a panel with a line of weakness which will perform the purpose set forth by Applicants, discussed supra. Since such a product appears to be the same or similar to that of Igaue et al, see discussion supra, the claims are considered unpatentable.

With regard to claims 31-40 and 46, the steps of the method are inherently, see MPEP 2112.02, or are necessarily and inevitably performed during use of the Igaue et al device.

See also the Response to Arguments section, infra.

Claim Rejections - 35 USC § 103

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

6. Claims 42, 44 and 47-48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Igaue et al GB '024 in view of Van Gompel PCT '152.

Applicant further claims the front and rear body panels having terminal crotch edges spaced apart to define a gap and an absorbent composite bridging the gap and connected to the panels. Igaue et al teaches a unitary front and rear connected to an absorbent composite with a tearable line of weakness adjacent a side seam. However Van Gompel PCT '152 at Figures 1-3, the sentence bridging pages 4-5, page 5, lines 27-28, i.e. infers the body panel 52 can have a length which are not less than the article length 26, the paragraph bridging pages 26-27, element 40, page 35, lines 4-5, i.e. open type diaper or pants type garment designed with a unitary front and rear connected to an absorbent composite or with front and rear panels having terminal crotch edges spaced apart to define a gap, i.e. nonunitary front and rear panels, and an absorbent composite bridging the gap and connected to the panels. Therefore, to make the pants designed with a unitary front and rear connected to an absorbent composite of Igaue et al pants designed with front and rear panels having terminal crotch edges spaced apart to define a gap and an absorbent composite bridging the gap instead would be obvious in view of the interchangeability as taught by Van Gompel et al. In so doing the prior art references teach the garment and method as using as claimed.

Response to Arguments

7. Applicant's 8-18-05 remarks with regard to the formalities and the 103 rejection based on Rosch and Van Gompel '464 and '497 are deemed moot in that the issues have not been reraised. Applicant's 8-18-05 remarks with regard to the rejection of the claims over Igaue et al have been noted but since they are substantially identical to those filed 2-11-05 they are deemed not persuasive for the same reasons set forth in the last Office action. Additionally Applicants have presented remarks with respect to three other issues. With respect to the remarks on page 12, first full paragraph, it is noted that the Examiner did not set forth that such was being read into the claims but rather was discussing the disclosure by the application which is exactly what is set forth. Also, the language "undue influence" was noted as relative since such is based on user perception, i.e. what is considered undue by one may not be by another. With respect to the footnote on page 13, first, claim 1 has been cancelled. Second, the Examiner was noting the breadth of the claim which does not require a body panel of only one layer and does not require a line of weakness through the entire thickness, i.e. all possible layers of the panel. With respect to the paragraph bridging pages 13-14, if many things can affect tensile strength, e.g. the size of a sample, then it follows that the manner in which such tensile strength is tested, e.g. the size of the sample required by the testing protocol, will also affect the determination thereof.

Conclusion

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.


The amendment of claims 42 and 44 and addition of claims 45-48 necessitated any new grounds of rejection.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karin M. Reichle whose telephone number is (571) 272-4936. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3761

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Karin M. Reichle
Primary Examiner
Art Unit 3761

KMR
October 24, 2005